

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Daniel K. Roberts	)	File Number: EB-09-SF-0031
a/k/a "Monkey Man"	)	NAL/Acct. No.: 200932960004
a/k/a "Monkey"	)	FRN: 0019070572
	)	
San Francisco, California	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 7, 2014****Released: February 7, 2014**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (*MO&O*), issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),<sup>1</sup> we deny the petition for reconsideration (Petition)<sup>2</sup> filed by Daniel K. Roberts a/k/a "Monkey Man" a/k/a "Monkey" (Mr. Roberts) of the *Forfeiture Order* issued by the Enforcement Bureau's Western Region (Region) on October 21, 2011.<sup>3</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act)<sup>4</sup> by engaging in unlicensed operation of a radio broadcast station.<sup>5</sup>

**II. BACKGROUND**

2. This case concerns Mr. Roberts's operation of Pirate Cat Radio (PCR), which operated a radio broadcast station on frequency 87.9 MHz in San Francisco, California, without a license issued by the FCC. As detailed in the *Forfeiture Order*, Mr. Roberts was the executive of the Pirate Cat Café and Studio located at 2781 21<sup>st</sup> Street, San Francisco, California. In 2008, Mr. Roberts began operating PCR from a radio studio located at the Pirate Cat Café and Studio. At the time the Notice of Apparent Liability for Forfeiture (*NAL*) was issued in this proceeding, PCR's website prominently featured Mr. Roberts; in addition, PCR described itself as an "unlicensed low powered community radio" located at the same address as the Pirate Cat Café and Studio.<sup>6</sup> The Enforcement Bureau's San Francisco Office issued numerous warnings and Notices of Unlicensed Operation (NOUOs) to Mr. Roberts and PCR concerning

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<sup>1</sup> See 47 U.S.C. § 405.

<sup>2</sup> See *Daniel K. Roberts*, Petition for Reconsideration (filed Nov. 21, 2011) (on file in EB-09-SF-0031) (Petition).

<sup>3</sup> *Daniel K. Roberts*, Forfeiture Order, 26 FCC Rcd 14484 (Enf. Bur. 2011) (*Forfeiture Order*), *aff'g* Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200932960004 (Enf. Bur. Aug. 31, 2009) (*NAL*).

<sup>4</sup> 47 U.S.C. § 301.

<sup>5</sup> *Forfeiture Order*, 26 FCC Rcd at 14488, para. 13.

<sup>6</sup> Subsequent to the issuance of the *NAL*, the PCR website underwent various changes that eliminated much of the language that evidenced PCR and Mr. Roberts's control of the PCR broadcasts on frequency 87.9 MHz.

unlicensed radio operations that detailed the potential penalties for operating an unlicensed radio station and for further violations of the Act and the Commission's rules (Rules).<sup>7</sup>

3. On April 28, 2009, and April 29, 2009, agents from the San Francisco Office, using radio direction-finding methods, determined that the transmission source of a radio signal on frequency 87.9 MHz was an antenna on the roof of a residence at 841 Corbett Avenue, San Francisco, California. The agents took field strength measurements of the signals and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules<sup>8</sup> and therefore required a license. A review of the Commission's records found no evidence of an FCC authorization for operation on frequency 87.9 MHz in San Francisco, California. Also on April 29, 2009, the agents observed Mr. Roberts operating and controlling the unlicensed radio station on frequency 87.9 MHz from the Pirate Cat Café and Studio. The agents subsequently monitored PCR and again determined that the transmission source of the unauthorized radio signal was 841 Corbett Avenue, San Francisco, California. The agents recognized and identified Mr. Roberts as the voice on the unlicensed transmissions carried on PCR.<sup>9</sup>

4. On August 31, 2009, the Enforcement Bureau's San Francisco Office issued the *NAL* in the amount of \$10,000 to Mr. Roberts, finding that Mr. Roberts apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed broadcast station.<sup>10</sup> After the issuance of the *NAL*, PCR's broadcasts on frequency 87.9 MHz in San Francisco ceased.<sup>11</sup> On October 23, 2009, after receiving an extension of time from the San Francisco Office, Mr. Roberts filed a response to the *NAL* (*NAL Response*).<sup>12</sup> In the *NAL Response*, Mr. Roberts "acknowledge[d] his involvement in extra-legal broadcasting years ago," but denied that "transmissions ha[d] ever emanated from the location admittedly under his control, the Pirate Cat Radio café and studio at 2781 21<sup>st</sup> Street in San Francisco."<sup>13</sup> Mr. Roberts also denied "'operating' or 'controlling' any 'unlicensed radio station on 87.9 MHz' or any transmission of energy on any frequency."<sup>14</sup> By contrast, Mr. Roberts conceded that "on April 28 and 29, 2009, when agents observed [him] at the Pirate Cat Radio address, [he] was operating the board, mixers and espresso machine."<sup>15</sup> Mr. Roberts alleged that PCR's internet-streamed program service is downloaded and broadcast by third parties, but acknowledged that PCR's website described his facility as

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<sup>7</sup> See, e.g., Notice of Unlicensed Operation to Daniel K. Roberts (Mar. 7, 2006) (on file in EB-05-SF-0139); Notice of Unlicensed Operation to Jason Seifert (Apr. 20, 2006) (on file in EB-06-SF-0031); Notice of Unlicensed Operation to Josh Goodwin (June 27, 2006) (on file in EB-06-SF-0026); Notice of Unlicensed Operation to Alexander Ness (Mar. 29, 2007) (on file in EB-07-SF-0037); On-Scene Notice of Unlicensed Operation (Aug. 18, 2008) (on file in EB-08-SF-0269).

<sup>8</sup> Section 15.239 of the Rules provides that non-licensed broadcasting in the 88–108 MHz frequency band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. See 47 C.F.R. § 15.239. Fundamental emissions from intentional radiators are not permitted in the 76–88 MHz frequency band. See 47 C.F.R. § 15.209(a). On April 28, 2009, the measurements indicated that the signal was more than 4,000 times greater than the maximum permissible level for a non-licensed Part 15 transmitter in the 88–108 MHz frequency band and more than 10,000 times greater than the maximum permissible level in the 76–88 MHz band. On April 29, 2009, the measurements indicated that the signal was more than 3,000 times greater than the maximum permissible level for a non-licensed Part 15 transmitter in the 88–108 MHz frequency band and more than 8,000 times greater than the maximum permissible level in the 76–88 MHz frequency band.

<sup>9</sup> *Forfeiture Order*, 26 FCC Rcd at 14485, para. 3.

<sup>10</sup> See *NAL*, *supra* note 3.

<sup>11</sup> *Forfeiture Order*, 26 FCC Rcd at 14485, para. 4.

<sup>12</sup> See Response of Daniel K. Roberts (filed Oct. 23, 2009) (on file in EB-09-SF-0031) (*NAL Response*).

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Forfeiture Order*, 26 FCC Rcd at 14486, para. 7.

<sup>15</sup> *Id.*

an “unlicensed low powered community radio.”<sup>16</sup> However, Mr. Roberts stated that “[t]his statement does not currently appear on the website, and is inaccurate because Pirate Cat Radio, while certainly unlicensed, ha[d] never originated broadcast transmissions or extra legal transmission of any kind.”<sup>17</sup>

5. The Region determined that Mr. Roberts’s arguments that Section 301 requires that the violator actually operate a transmitter at the location of the studio were invalid, and stated that (for purposes of Section 301) “the word ‘operate’ has been interpreted to mean ‘the general conduct or management of a station as a whole, as distinct from the specific technical work involved in the actual transmission of signals.’”<sup>18</sup> The Region stated that, consistent with precedent, the use of the word “operate” in Section 301 of the Act captures not just the “‘actual, mechanical manipulation of radio apparatus,’ but also operation of a radio station generally.”<sup>19</sup> The Region further noted that the Commission can consider whether an individual exercises “any means of actual working control over the operation of the [station] in whatever manner exercised” when determining whether such individual is involved in the general conduct or management of an unlicensed station.<sup>20</sup>

6. The Region observed that while Mr. Roberts stated that he had no control over PCR’s unlicensed transmissions, Mr. Roberts held himself out publicly as PCR’s manager and described PCR as a broadcast station, not just a source of internet programming.<sup>21</sup> The Region determined that Mr. Roberts solicited funds on the PCR website, stating that “[d]onations go towards monthly station cost of running the FM transmitter and help Pirate Cat Radio buy new radio station equipment.”<sup>22</sup> In addition, in August

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* Mr. Roberts also argued that he was unable to pay the proposed forfeiture amount. However, Mr. Roberts failed to produce any financial information or documentation, and the Region consequently denied his request to reduce the proposed forfeiture. *See id.* at 14488, para. 11.

<sup>18</sup> *Id.* at 14486, para. 8 (quoting *Campbell v. United States*, 167 F.2d 451, 453 (5th Cir. 1948) (comparing the use of the words “operate” and “operation” in Sections 301, 307 and 318 of the Act, and concluding that the word “operate,” as used in Section 301 of the Act, means both the technical operation as well as the general conduct or management of a broadcast radio station)).

<sup>19</sup> *See id.*; 47 U.S.C. § 307(c)(1).

<sup>20</sup> *Forfeiture Order*, 26 FCC Rcd at 14486, para. 8 (quoting *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, 11 FCC Rcd 9712, 9747, para. 91 (1995), *aff’d sub nom. DIRECTV, Inc. v FCC*, 110 F.3d 816 (D.C. Cir 1997). *See, e.g., Vicot Chery*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 14596 (Enf. Bur. 2010).

<sup>21</sup> *See Forfeiture Order*, 26 FCC Rcd at 14487, para. 9. *See also* Joel Selvin, *Pirates Ride the Airwaves from Mission Redoubt*, S.F. Gate, Jan. 5, 2009, available at [http://articles.sfgate.com/2009-01-05/entertainment/17197051\\_1\\_pirate-radio-monkey-radio-station](http://articles.sfgate.com/2009-01-05/entertainment/17197051_1_pirate-radio-monkey-radio-station) (last visited Nov. 8, 2010) (“Monkey has operated Pirate Cat Radio in various locations for 12 years and opened the cafe in March with a novel business plan. He oversees a staff of 52 disc jockeys who pay a \$30 monthly fee to do their air shifts . . .”); Ashley Harrell, *The Radio Pirate Goes Legit*, S.F. Weekly, May 26, 2010, available at <http://www.sfweekly.com/2010-05-26/news/the-radio-pirate-goes-legit/> (last visited Nov. 8, 2010) (discussing Mr. Roberts’s history as a pirate radio broadcaster) (Harrell Article); <http://www.piratecatradio.com/about/php> (last visited July 28, 2008) (“Pirate Cat is an unlicensed low powered community radio station, broadcasting on 87.9 megahertz.”).

<sup>22</sup> *Forfeiture Order*, 26 FCC Rcd at 14487, para. 9. Mr. Roberts also stated on the PCR website “that Title 47 Section 73.3542 of the U.S. Code of federal regulations currently allows Pirate Cat Radio 87.9fm to legally broadcast with out [sic] a formal licence [sic] from the FCC.” *Id.* We note that the authority to operate pursuant to Section 73.3542 of the Rules must be granted by the Commission and the applicant bears the burden of showing the required “extraordinary circumstances” to support such a grant. *See A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 614, para. 20 (2008). No evidence exists showing that Mr. Roberts or PCR has ever received such a grant of authority from the Commission. Additionally, the frequency used by Mr. Roberts and PCR at 87.9 MHz is not allocated to the FM broadcast band. *See* 47 C.F.R. § 73.201.

2009, Mr. Roberts accepted a certificate from the San Francisco Board of Supervisors which recognized PCR for its “trailblazing efforts toward freeing the airwaves from corporate control, providing the community with training in radio broadcast skills, empowering voices ignored by traditional media outlets, and contributing to the advancement of the city’s coffee culture.”<sup>23</sup> The Region also determined that Mr. Roberts admitted operation of PCR as an unlicensed radio broadcast station in response to the *NAL* on October 31, 2009, when he issued a press release stating that “Pirate Cat Radio . . . has ceased its terrestrial broadcast on 87.9FM in response to the latest demands of the Federal Communications Commission.”<sup>24</sup> The Region found that “[c]oncurrent with the issuance of Roberts’ press release, broadcasts of PCR on frequency 87.9 MHz in the San Francisco area did cease.”<sup>25</sup>

7. In his Petition, Mr. Roberts again argues that no facts connect him with the transmissions from the transmitter located at 841 Corbett Avenue; the “allegations” contained in the *Forfeiture Order* do not meet the requirements of Section 301 of the Act; precedent does not support the Region’s violation determination; and the *Forfeiture Order* “constitutes an unlawful infringement on protected speech.”<sup>26</sup> We address these arguments below.

### III. DISCUSSION

8. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.<sup>27</sup> A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.<sup>28</sup> As discussed below, we find that

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<sup>23</sup> *Forfeiture Order*, 26 FCC Rcd at 14487, para. 9 (quoting Harrell Article). We note that the Commission created the low power FM (LPFM) broadcast service to encourage nonprofit educational groups to actively participate in local broadcasting and to foster a diverse range of community voices. See 47 C.F.R. § 73.801 *et seq.* See also <http://www.fcc.gov/encyclopedia/low-power-fm-broadcast-radio-stations-lpfm> (last visited Feb. 3, 2014).

<sup>24</sup> *Id.* at 14487–88, para. 10. See Kevin Montgomery, *Pirate Cat Radio Fined \$10k and Ceases FM Broadcast*, Mission Mission, Nov. 2, 2009, available at <http://www.missionmission.org/2009/11/02/pirate-cat-radio-fined-10k-and-ceases-fm-broadcast/> (last visited Aug. 16, 2010). The press release also stated that “PCR can continue as an internet only station and the café/studio on 21<sup>st</sup> [sic] will continue to operate, . . . but it cannot safely broadcast over the terrestrial FM band without possibly jeopardizing its volunteers and supporters.” *Id.* The press release concluded by stating that Mr. Roberts and others working at the station “made a collective decision that Pirate Cat Radio must come off the public airwaves, until some method is found to change the law or get it authorized under existing law.” *Id.*

<sup>25</sup> *Forfeiture Order*, 26 FCC Rcd at 14488, para. 10. This fact undercuts Mr. Roberts’s earlier assertion that the transmissions detected by the San Francisco Office agents were caused by third parties outside his control involved in airing internet-streamed program service from PCR. See *id.* at 14486, para. 7.

<sup>26</sup> Petition at 2–12. Mr. Roberts contends that the *NAL* did not comply with the Commission’s rules because it did not give him “an opportunity within 30 days to address the charges in a personal interview at the field office as required by Section 1.80(d) of the Rules, 47 C.F.R. § 1.80(d).” *Id.* at 1 n.1. Mr. Roberts misunderstands the application of the interview provisions of Section 1.80(d). An opportunity for an interview is not required when the individual “is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required . . . .” 47 C.F.R. § 1.80(d)(3). As described above, Mr. Roberts was required to have an authorization for his PCR broadcast on frequency 87.9 MHz and therefore was not entitled to a personal interview at the field office before the imposition of a forfeiture.

<sup>27</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)).

<sup>28</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, para. 2.

Mr. Roberts has not provided any basis to warrant reconsideration of the *Forfeiture Order*. We therefore affirm the Region's findings.<sup>29</sup>

9. In his Petition, Mr. Roberts essentially repeats the arguments considered (and rejected) by the Region in the *Forfeiture Order*. Mr. Roberts primarily argues that the Region cannot support a Section 301 violation finding against him because it cannot show that he physically operated a transmitter without a license.<sup>30</sup> Specifically, Mr. Roberts disagrees with the Region's application of *Campbell v. United States*,<sup>31</sup> which established that the term "operate" under Section 301 refers to "the general conduct or management of a station as a whole, as distinct from the specific technical work involved in the actual transmission of signals."<sup>32</sup> Mr. Roberts maintains that this distinction depends upon whether a subject was operating a station without an operator's license as opposed to a station operation without a license, and argues that the Region incorrectly applied a vague "management" standard in support of its violation finding.<sup>33</sup> We disagree. The *Campbell* court determined that a Section 301 violation encompasses the broader "management" definition of "operate" when it refused to limit the term to cover only "the actual, mechanical manipulation of radio apparatus."<sup>34</sup> Instead, the court found that the term "operate," as used in Section 301, encompasses "the general conduct or management of a station as a whole."<sup>35</sup> The court concluded that Section 301's prohibition of unlicensed broadcast operations "is intended to cover generally both radio stations and radio operators."<sup>36</sup> As a result, the Region correctly concluded that Mr.

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<sup>29</sup> Mr. Roberts argues that certain sworn statements made in his *NAL Response* must be accepted as true, including his statements that he had no ownership, access, and control over any facility at 841 Corbett Avenue, that he did not install or operate a transmitter at 841 Corbett Avenue, that he did not create a studio-transmitter link from the Pirate Cat Café and Studio to another location, and that "no extra-legal transmitter had ever been energized at the location of Pirate Cat Radio" because the Region failed to rebut them. Petition at 1–2. We disagree. The Region took into account these statements when it specifically determined that Mr. Roberts "mistakenly argues that a violation of section 301 of the Act requires that the violator be actually operating a transmitter at the location of the studio and nothing less." *Forfeiture Order*, 26 FCC Rcd at 14486, para. 8.

<sup>30</sup> Petition at 3–6.

<sup>31</sup> 167 F.2d 451 (5th Cir. 1948).

<sup>32</sup> Petition at 6; *Forfeiture Order*, 26 FCC Rcd at 14486, para. 8 (quoting *Campbell*, 167 F.2d at 453). Mr. Roberts objects to the Region's assertion that, in order to determine whether an individual is involved in the general conduct or management of the station, the Commission can consider whether such individual exercises "any means of actual working control over the operation of the [station] in whatever manner exercised." See Petition at 8–9. While Mr. Roberts may disagree with this longstanding Commission precedent, he provides no evidence that he did not exercise working control over the operation of PCR without a license.

<sup>33</sup> Petition at 6–7. Mr. Roberts also cites to *United States v. Molyneux*, 55 F.2d 912 (2d Cir 1932), a case decided under the Federal Radio Act, which predates the existence of the Federal Communications Commission. That case is inapposite to the instant case because *Molyneux* concerned an individual handling and manipulating radio apparatus, not an individual promoting a radio station and controlling its management and operation. Although mechanical manipulation of radio apparatus is not required under the standard established in *Campbell*, we note that the record in this proceeding demonstrates (and Mr. Roberts did not dispute) that Mr. Roberts was observed operating the board, mixers, and other equipment at the Pirate Cat Café and Studio and that agents from the San Francisco Office recognized and identified Mr. Roberts as the voice on the unlicensed transmissions. See *supra* paras. 3–4.

<sup>34</sup> *Campbell*, 167 F.2d at 453.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* Mr. Roberts argues that previous enforcement actions against unlicensed operators involved individuals with access to the coaxial cable linking the operator's residence to the transmitter or the actual room containing the transmitter. See Petition at 7 n. 5 (citing *Durrant Clark*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6982 (Enf. Bur. 2011); *Christopher M. Myers*, Memorandum Opinion and Order 26 FCC Rcd 10302 (Enf. Bur. 2011); *Nounoune Lubin*, Forfeiture Order, 26 FCC Rcd 7758 (Enf. Bur. 2011); *Audre Alleyne and Jessie White*, (continued....)

Roberts's actions involved the general conduct or management of PCR as a whole, resulting in the operation of a radio broadcast station without an FCC license in violation of Section 301 of the Act.

10. We find no merit to Mr. Roberts's argument that the *Forfeiture Order* was an unlawful infringement on protected speech.<sup>37</sup> As noted in his Petition, Mr. Roberts concedes that "Congress acted within its powers in creating a regime of licensing for broadcast . . . providing that unlicensed transmissions must be banned from the airwaves."<sup>38</sup> Mr. Roberts's suggestion that the enforcement action taken against him results from the content of the unlicensed broadcasts and his promotional activity in support of PCR's operations is unfounded.<sup>39</sup> Rather, it is Mr. Roberts's operation of an unlicensed broadcast radio station that formed the basis of the Section 301 violation.

11. Based on the overall record in this case, we find that the Region correctly determined that Mr. Roberts was engaged in the management and operation of PCR in violation of Section 301 of the Act and that such operation was supported by a preponderance of the evidence.<sup>40</sup> This included Mr. Roberts's fundraising for the PCR FM transmitter, his long history of promoting PCR and himself, and the physical control of the PCR broadcast transmission on frequency 87.9 MHz, which he announced he was stopping after the issuance of the *NAL*.<sup>41</sup> Therefore, we find that the Petition fails to demonstrate a material error or omission in the underlying *Forfeiture Order* or raise additional facts not known or not existing until after Mr. Roberts's last opportunity to present such matters. Accordingly, we affirm the *Forfeiture Order* and find Mr. Roberts liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.

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*Forfeiture Order*, 26 FCC Rcd 10372 (Enf. Bur. 2011) (*Alleyne and White*)). As indicated above, it is Mr. Roberts's management of PCR, not access to PCR's radio equipment, which violated Section 301. However, we note that in certain enforcement actions cited to by Mr. Roberts the evidence supporting a finding of unlicensed operation included unsworn statements by individuals acknowledging that they owned and operated the station as well as the ability of the individuals to turn off the unlicensed station. See *Alleyne and White*, 26 FCC Rcd at 10376, para. 9; *Eleuterio Lebron*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 13070, 13070, para. 2 (Enf. Bur. 2011). Mr. Roberts demonstrated similar control over PCR when he announced and effected the cessation of PCR's transmissions following issuance of the *NAL*.

<sup>37</sup> Petition at 9–11.

<sup>38</sup> *Id.* at 9.

<sup>39</sup> Indeed, Mr. Roberts previously stated publicly his belief that the enforcement action taken against him was not based on the content of PCR's broadcasts. See Titania Kumeh, *Music Monday: Pirate Cat Radio vs. the FCC*, Mother Jones Magazine, Jan. 18, 2010, available at [www.motherjones.com/riff-2009-12-fight-radio-right](http://www.motherjones.com/riff-2009-12-fight-radio-right) (last visited April 16, 2013) (reporting that Mr. Roberts stated that "the reason the FCC is possibly giving us a fine and telling us to get off the air, I think, is not because of content or because of interfering with other stations. The FCC just licensed outside of the filing period for TV channel 6 in Fremont, which utilizes 87.9 FM for its audio carrier, so I wouldn't be surprised if somebody with a big pocketbook said, 'Hey! We want this license and we're going to pay you money to give us a license outside of your filing period.'") (Kumeh Article).

<sup>40</sup> See *AT&T, Inc.*, *Forfeiture Order*, 27 FCC Rcd 10803 (Enf. Bur. 2012) (finding the preponderance of the evidence, including the cessation of interference when subject exercised control of device by turning it off, supports finding a Section 301 violation, even when the subject denies that it was the source of the interference).

<sup>41</sup> Despite Mr. Roberts's carefully parsed arguments about the definition of "operate" under Section 301, we note that he continued to publicize his operation of PCR for months after the issuance of the *NAL*. See, e.g., Kumeh Article. In that article, Mr. Roberts was asked, "Why fight for the right to be on the radio when it's practically obsolete?" Mr. Roberts responded, "[a] lot of people don't have the money to spend to be a part of the digital world. They don't own a computer. They don't have an Internet connection; if they do have an Internet connection and computer, they can listen to Pirate Cat Radio online, but they still have to deal with buffering and not having the right software to listen to the stream. Whereas when a radio station broadcasts through analog air, you can go and pick up a radio at Radio Shack literally for \$5 and turn it on, tune to 87.9 FM, and you'll get Pirate Cat Radio." Kumeh Article.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>42</sup> and Section 1.106 of the Rules,<sup>43</sup> the Petition for Reconsideration filed by Daniel K. Roberts a/k/a “Monkey Man” a/k/a “Monkey” **IS DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

13. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules, Daniel K. Roberts a/k/a “Monkey Man” a/k/a “Monkey” **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.<sup>44</sup>

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules immediately and no later than thirty (30) calendar days after the release date of this Memorandum Opinion and Order.<sup>45</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>46</sup> Daniel K. Roberts a/k/a “Monkey Man” a/k/a “Monkey” shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made.

15. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>47</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

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<sup>42</sup> 47 U.S.C. § 405.

<sup>43</sup> 47 C.F.R. § 1.106.

<sup>44</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>45</sup> 47 C.F.R. § 1.80.

<sup>46</sup> 47 U.S.C. § 504(a).

<sup>47</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

16. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>48</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

17. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both regular mail and by certified mail, return receipt requested, to Daniel K. Roberts a/k/a “Monkey Man” a/k/a “Monkey” at his address of record, and to his counsel, Michael Couzens, Esquire, Michael Couzens Law Office, 6536 Telegraph Ave., Suite B201, Oakland, CA 94609.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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<sup>48</sup> See 47 C.F.R. § 1.1914.